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Bill Analysis
Legislative Service Commission

Sub. S.B. 165
125th General Assembly
(As Reported by H. Finance and Appropriations)

Sens. Schuring, Schuler, Fedor, Dann, Harris

Reps. D. Evans, Miller, S. Patton

BILL SUMMARY

- Authorizes a statutory lien to secure the performance of obligations by recipients of development loans, grants, and loan guarantees made pursuant to Section 13, Article VIII of the Ohio Constitution.
- Authorizes a statutory lien on exempted property to secure the performance of obligations under a tax exemption agreement entered into in connection with an enterprise zone or community investment area.
- Concerning tax increment financing, authorizes a statutory lien on exempted property to secure any required reimbursements to local taxing authorities of the amount of taxes that would have been payable had the property not been exempted.
- Authorizes a statutory lien on exempted property to secure service payments made in lieu of taxes under a development agreement entered into as part of an urban renewal area or community redevelopment corporation program.

CONTENT AND OPERATION

Overview

Section 13 of Article VIII of the Ohio Constitution provides for economic development programs to benefit the state's industry, commerce, distribution, and research. Pursuant to this authority, the General Assembly has developed programs designed to invest in areas throughout the state to promote economic growth. Under the programs, the state and local governments assist in and facilitate the establishment or development of projects that will create new jobs or

preserve existing jobs and employment opportunities. Assistance is generally provided in the form of direct loans, loan guarantees, and grants. Bonds that are not backed by tax revenue can be issued to raise money necessary for providing the assistance.

Additionally, tax assistance for economic development at the local level is carried out by a variety of programs including community reinvestment areas, enterprise zones, tax increment financing, urban renewal areas, and community redevelopment corporations. Assistance under these programs is generally provided in the form of tax exemptions that are applied to certain properties or improvements.

Securing performance under development loans, grants, and loan guarantees

(R.C. 9.661, 166.06, 166.07, and 166.21; R.C. 166.02 and 184.02, not in the bill)

Current law authorizes liens and other security interests for development loans and, in certain instances, authorizes unsecured loans. The terms of any lien, such as its amount or priority, are left to the discretion of the Director of Development or other person administering the loan.

Under the bill, development loans and loan guarantees made pursuant to Section 13, Article VIII of the Ohio Constitution, whether granted by the state or by a local government, may be secured by a lien on the borrower's property (both real and personal) that is acquired with the loan. Whether to utilize the lien provided for in the bill is left to the discretion of the Director or other person administering the loan. The lien can be for up to the amount financed under the development loan agreement or the amount guaranteed under the loan guarantee agreement and used to acquire the property. The lien can be in addition to any other security required by the loan or guarantee agreement, but the sum of the lien and the value of the other security cannot exceed the amount financed or guaranteed and used to acquire the property. In addition to securing repayment of the loan, the bill's lien also secures the fulfillment of all other obligations under the loan or loan guarantee agreement. A lien imposed under the bill on real property "attaches" and may be "perfected" in the same manner as mortgage liens.¹ A lien imposed under the bill on personal property, however, attaches and may be perfected in the same manner as security interests under the Uniform Commercial Code Secured Transactions Law.

¹ To say that a lien "attaches" is to recognize the lien's creation or existence, thereby granting the secured party certain rights against the borrower, while the "perfection" of a lien recognizes its priority over subsequently perfected security interests or unperfected security interests, regardless of when those unperfected security interests attached.

Obligations agreed to be taken on to obtain a development grant or inducement made under the authority of Section 13, Article VIII of the Ohio Constitution also may be secured by similar liens. Such a lien is for the amount of the grant or other thing of value transferred under the agreement and used to acquire the project property.

The bill provides that liens imposed under its provisions against real property may be enforced by civil action in the court of common pleas of the county where the real property is located in the same manner as mortgage liens are enforced. Liens against personal property, however, may be enforced in the same manner as security interests under the Uniform Commercial Code Secured Transactions Law.

The bill specifies that the programs to which it applies include the Industrial Development Bond Program (R.C. Chapter 165.), the Facilities Establishment Fund, Innovation Ohio, and Research and Development Project Programs (R.C. Chapter 166.), the Third Frontier Commission Program (R.C. Chapter 184.), and the Community Improvement Corporation Program (R.C. Chapter 1724.).

Liens under local tax exemption agreements

Under continuing law, the legislative authority of a municipal corporation or a county may grant exemptions from taxation for certain improvements to property in its jurisdiction. The tax exemptions are provided pursuant to a variety of programs including community reinvestment areas, enterprise zones, tax increment financing, urban renewal areas, and community redevelopment corporations. Additionally, townships are authorized to grant tax increment financing exemptions for improvements in unincorporated areas.

Community reinvestment areas and enterprise zones

(R.C. 3735.671 and 5709.631)

Under continuing law, if a property owner materially fails to fulfill its obligations under a tax exemption agreement pertaining to a community reinvestment area or enterprise zone or is found to have fraudulently claimed not to owe delinquent taxes at the time the agreement was executed, the legislative authority may require the repayment of the amount of taxes that would have been payable had the property not been exempted. In such an instance, the bill authorizes the legislative authority to secure repayment by the property owner through a lien on the exempted property in the amount required to be paid. While continuing law authorizes tax exemptions within a community reinvestment area

for commercial, industrial, and residential property, the bill limits the lien under such a program to commercial or industrial property.

Under the bill, liens on property exempted from taxation under the community reinvestment area program attach, and may be perfected, collected, and enforced, in the same manner as mortgage liens. The enforcement of liens on property exempted from taxation under the enterprise zone program, however, depends on the type of property exempted. Liens on real property attach, and may be perfected, collected, and enforced, in the same manner as mortgage liens, while liens on tangible personal property attach, and may be perfected, collected, and enforced, in the same manner as security interests under the Uniform Commercial Code Secured Transactions Law.

Tax increment financing

(R.C. 5709.831)

Under continuing law, the legislative authority of a municipal corporation, township, or county that grants a tax exemption pursuant to a tax increment financing program, may require the owner of the exempted property to reimburse local taxing authorities the amount of real property taxes that would have been payable had the property not been exempted. If the legislative authority requires the owner to make payments in lieu of taxes, the legislative authority may require such reimbursement only to the extent the owner failed to make the payments. The bill authorizes a lien on the exempted property to secure any reimbursement. The lien attaches, and may be perfected, collected, and enforced, in the same manner as mortgage liens.

Urban renewal areas and community redevelopment corporations

(R.C. 725.04, 1728.11, and 1728.111)

Under continuing law, a property owner or community redevelopment corporation that receives a tax exemption under an urban renewal area or community redevelopment corporation program is required to make service payments in lieu of taxes on the real property that is exempted. The bill authorizes a lien on the exempted property to secure the service payments. The lien attaches, and may be perfected, collected, and enforced, in the same manner as mortgage liens.

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	12-16-03	p. 1291
Reported, S. Finance & Financial Institutions	04-28-04	p. 1776
Passed Senate (32-0)	05-05-04	pp. 1863-1864
Reported, H. Finance & Appropriations	11-17-04	p. 2274

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